

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-110580
		TRIAL NO. B-1100881
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MICHAEL THOMPSON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. (2); App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Michael Thompson appeals from the judgment of the Hamilton County Court of Common Pleas convicting him on one count of felony murder, under R.C. 2903.02(B), and the accompanying three-year firearm specification, for the shooting death of Curtis McCants, and one count of having weapons while under a disability, under R.C. 2923.13(A)(3).

The evidence at trial, including cellular telephone records, demonstrated that Thompson had arranged to meet McCants under the pretense of purchasing drugs, but with the actual intention of robbing him. During the encounter in McCants's car on a residential street, Thompson shot McCants two times, killing him. Thompson fled from the scene before the police arrived, but he left his cellular telephone on the passenger seat of McCants's car. A witness, Kellie Bass, saw a man who resembled Thompson exiting from McCants's car after the shooting.

In his first assignment of error, Thompson argues that the trial court erred in two instances by admitting hearsay testimony over his objection. First, Thompson challenges Angelo Dykes testimony that McCants had told him shortly before the shooting that he was on his way to “hit a lick”—to sell drugs to someone. But McCants’s statement that subjected him to criminal liability was admissible under Evid.R. 804(B)(3), as McCants was unable to testify.

Next, Thompson argues that the trial court erred by permitting Detective Tim Gormly to testify about Bass’s statement given to the police on the night of the shooting. The state argues that the statement was not hearsay and was admissible under Evid.R. 801(D)(1)(b). But Bass’s interview statement was not entirely consistent with her trial testimony, and Thompson did not claim that Bass had recently fabricated her testimony or that she was otherwise influenced to testify falsely. Thus, the trial court erred by admitting the statement under Evid.R. 801(D)(1)(b).

However, the damaging component of Bass’s statement relayed by Gormly—her description of the man exiting from McCants’s car—was consistent with her trial testimony. Thus, Gormly’s testimony about this statement was duplicative of admissible evidence. Because of this and the strength of the admissible evidence of Thompson’s guilt, we determine that the trial court’s error in admitting the challenged testimony was harmless beyond a reasonable doubt. *See* Crim.R. 52(A); *State v. Williams*, 38 Ohio St.3d 346, 353, 528 N.E.2d 910 (1988). Accordingly, we overrule the first assignment of error.

In his second assignment of error, Thompson argues that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence. We disagree.

First, upon the evidence adduced at trial, reasonable minds could have reached different conclusions as to whether each element of the offenses had been proved beyond

a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

And second, we find nothing in the record of the proceedings below to suggest that the jury, in resolving the conflicts in the evidence adduced on the charged offenses, lost its way or created such a manifest miscarriage of justice as to warrant the reversal of Thompson's convictions. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We note that the weight to be given the evidence and the credibility of the witnesses were primarily for the trier of the facts. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Accordingly, we overrule the assignment of error.

We overrule Thompson's third assignment of error, challenging the trial court's imposition of maximum, consecutive sentences, because Thompson has not demonstrated that the trial court imposed a sentence that was contrary to law or an abuse of discretion.<sup>1</sup> *See State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 4.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., CUNNINGHAM and DINKELACKER, JJ.**

To the clerk:

Enter upon the journal of the court on October 17, 2012  
per order of the court \_\_\_\_\_.  
Presiding Judge

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<sup>1</sup> The trial court sentenced Thompson before the effective date of Am.Sub.H.B. 86.